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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,044	12/29/2003	Dennis Schultz	HISHE: 66719	7386

24201 7590 03/09/2006

FULWIDER PATTON  
6060 CENTER DRIVE  
10TH FLOOR  
LOS ANGELES, CA 90045

EXAMINER

SAETHER, FLEMMING

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/749,044		SCHULTZ, DENNIS	
	<b>Examiner</b>		<b>Art Unit</b>	
	Flemming Saether		3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 February 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-25 are alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over Ruzicka (US 5,219,392) in view of Colvin (US 4,930,378) and further in view of Perret (US 4,073,160). In the embodiment of Fig. 12 in Ruzicka discloses a socket comprising a plurality of rounded inwardly directed lobes with contact surfaces opposite a plurality of non-contact surfaces all equally spaced about a center. There is also provided recesses between the lobes and non-contact sections (read as being at the transition between the lobe and non-contact section) which transition to each of the lobe and non-contact surface. The drive socket being a fastener has not been given patentable weight since is occurs in the preamble and the body of the claims do not "breath life and meaning to the preamble" also, the clearance between the socket and the key is considered an intended use since the claims are limited to a socket, of which Ruzicka would be capable. In the embodiment of Fig. 12, Ruzicka does not disclose the transition to be curved. Colvin discloses a similar socket and teaches the equivalence between a transition which is not curved and smooth (see Figs, 15 or 16) and a transition which is (see Fig. 4). Therefore, at the time the invention was made, it would have been obvious for one of ordinary skill in the art to replace the not curved transition in Ruzicka with a curved and smooth transition as disclosed in Colvin since Colvin

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teaches their equivalence. Modified Ruzicka, does not disclose the socket in a fastener. Perret teaches the equivalence of a drive socket being formed in a fastener and in a tool (column 4, paragraph beginning line 52). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to provide the socket disclosed in Ruzicka in a fastener in view of the teaching of Perret. Again, the clearance with a key is an intended use.

***Response to Remarks***

The Terminal Disclaimer filed 9/12/2005 has now been approved and as such the double patenting rejection has been obviated.

Applicant argues that the claims define over modified Ruzicka '392 because the preamble should be given weight and the claims limited to a fastener. In support, applicant contends that the instant claims are analogous to *Kropa v. Robie* where the claims were limited to an "An abrasive article" as set forth in the preamble. In response, the examiner disagrees because in *Kropa v. Robie* the body of the claim required abrasive grains and hardened binder which is what gave "life and breath to preamble" to the preamble. The claims of the instant application have no such language which could be considered analogous to the abrasive grains and hardener. The examiner suggests that in the claim of the instant invention, the body of the claims be amended to include essential features of the fastener such as the shank, thread and head so as to give meaning to the preamble.

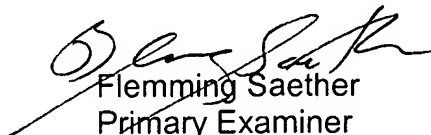
The previous argument notwithstanding the examiner agrees that the improvement type claims require the combination with a threaded male fastener. However, as applied above, Perret teaches the drive socket of a fastener and a wrench are analogous to one another.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 571-272-7071. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Flemming Saether  
Primary Examiner  
Art Unit 3677